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Report of the Working Group on the Universal Periodic Review*

Germany

Addendum

Views on conclusions and/or recommendations, voluntary commitments and replies presented by the State under review

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The Federal Republic of Germany's response to the recommendations set out by the UN Human Rights Council in the Universal Periodic Review on 8 May 2018

1. Germany welcomes the recommendations made during its Third Universal Periodic Review on 8 May 2018. Following the review, the Federal Government held meetings with civil society representatives and the German Institute for Human Rights (the German National Human Rights Institution/NHRI). The Federal Government Commissioner for Human Rights Policy and Humanitarian Aid also discussed the outcome of the review with the Bundestag Committee on Human Rights and Humanitarian Aid.

2. The Federal Government has carefully examined all 259 recommendations. All relevant federal government ministries were involved in this process. Due to the distribution of competences across different levels of government in the German federal system and to the limited time available, full consideration across all levels of government was not possible. For this reason, some recommendations, in particular those that have direct implications for the Länder level, have been noted for further consideration. This does not necessarily imply that the Federal Government does not share the objective of such noted recommendations.

3. Germany has chosen to either support or note all recommendations. Germany considers that in a number of cases, current German law and practice – partially or as a whole – already reflect the content of recommendations made. Therefore, the Federal Government does not see the need for additional action in all cases in which recommendations have been supported.

4. Recommendations were noted for different reasons. In some cases, a recommendation may address a number of different issues, and Germany may only partially support the recommendation, while noting the remainder. In some cases, Germany supports the objective of a recommendation, but cannot commit to implementing the measures that have been proposed to achieve the objective; in other cases, no additional measures are planned for the time being. Moreover, some recommendations formulate inaccurate assumptions or assertions, which may lead to a decision to note the recommendation. In a number of cases, additional explanations are provided alongside the response to the recommendation.

Response to the recommendations[1]

155.1–3:

Noted.

155.4–6:

Supported.

155.7:

Noted.

155.8–10:

Supported.

155.11:

Noted.

155.12:

Supported.

155.13:

Noted.

155.14–16:

Supported.

155.17:

Noted.

155.18:

Noted.

155.19:

Supported.

155.20:

Noted.

155.21–25:

Supported.

155.26–28:

Noted.

155.29–30:

Supported.

155.31:

Noted.

155.32–48:

Supported.

155.49–50:

Supported.

155.51–52:

Supported.

155.53:

Noted.

155.54–60:

Supported.

155.61:

Noted.

155.62–75:

Supported.

155.76:

Noted.

155.77:

Noted.

155.78–84:

Noted.

155.85:

Noted.

155.86–92:

Supported.

155.93–95:

Supported.

155.96–98:

Supported.

155.99–111:

Supported.

155.112:

Noted.

155.113:

Noted.

155.114:

Noted.

155.115–117:

Supported.

155.118:

Noted.

155.119–121:

Supported.

155.122:

Noted.

155.123–128:

Supported.

155.129:

Noted.

155.130–131:

Supported.

155.132:

Noted.

155.133–141:

Supported.

155.142:

Noted.

155.143–146:

Supported.

155.147:

Noted.

155.148:

Noted.

155.149–164:

Supported.

155.165:

Noted.

155.166:

Supported.

155.167:

Noted.

155.168–172:

Supported.

155.173:

Noted.

155.174–176:

Supported.

155.177:

Supported.

155.178:

Noted.

155.179–183:

Supported.

155.184:

Noted.

155.185–188:

Supported.

155.189–190:

Supported.

155.191–195:

Supported.

155.196:

Noted.

155.197–199:

Supported.

155.200:

Noted.

155.201–203:

Supported.

155.204:

Noted.

155.205–207:

Supported.

155.208:

Noted.

155.209–212:

Supported.

155.213:

Supported.

155.214–215:

Supported.

155.216:

Supported.

155.217, 155.218, 155.220:

Supported.

155.219:

Supported.

155.221:

Supported.

155.222:

Noted. See 155.219.

155.223–224:

Supported.

155.225:

Noted.

155.226–230:

Supported.

155.231:

Noted.

155.232–237:

Supported.

155.238:

Noted.

155.239–240:

Supported.

155.241:

Noted.

155.242–256:

Supported.

155.257:

Noted.

155.258–259:

Supported.

Notes

[1] **155.1–3:**
Noted. The Convention uses the term "migrant worker" in a way that includes irregular migrants. This is not compatible with German law. The human rights of migrants are guaranteed by the ICCPR and the ICESCR, which are applicable in Germany.
155.4–6:
Supported. According to the Federal Government's coalition agreement, Germany aims to ratify the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights. The necessary legal review process to assess the feasibility of a ratification has not yet been completed.
155.7:
Noted. Germany signed Protocol No. 12 to the Convention for the Protection of Human Rights and Fundamental Freedoms on 4 November 2000, but has not ratified it. Ratification of the Protocol was put on hold for the time being to allow observation of the progress made by other states towards ratification and the development of the case-law of the European Court of Human Rights following entry into force of the Protocol. This should make it possible to gain a clearer idea of what effect ratification of the Protocol would have on the German legal order. No assessment can yet be made based on the ECHR's rulings to date.
155.8–10:
Supported. According to the Federal Government's coalition agreement, Germany aims to ratify ILO Convention No. 169. The necessary legal review process to assess the feasibility of a ratification has yet to be completed.
155.11:
Noted. The Federal Government has already comprehensively examined the subject at stake.
155.12:
Supported.
155.13:
Noted. The horizontal implications of this recommendation require further study.
155.14–16:
Supported. As noted regularly in the Annual Report by the Government of the Federal Republic of Germany on its Policy on Exports of Conventional Military Equipment, the Federal Government takes decisions on licences for exports of military equipment on a case-by-case basis. This process is based on the statutory requirements of the War Weapons Control Act, the Foreign Trade and Payments Act, the Foreign Trade and Payments Ordinance, as well as on the Political Principles Adopted by the Federal Government for the Export of War Weapons and Other Military Equipment of 2000, on Council Common Position 2008/944/CFSP and on the Arms Trade Treaty, including Article 7 (4) thereof.
155.17:
Noted. The National Action Plan on Business and Human Rights provides for monitoring of the implementation of human rights due diligence. The results of this monitoring will form the basis for a decision in 2020 on whether legislative measures will be taken.
155.18:
Noted. The National Action Plan on Business and Human Rights (NAP) expresses clear expectations with regard to human rights due diligence. The NAP does not, however, have legislative force. Results will be reviewed in 2020; see 155.17.
155.19:
Supported.
155.20:
Noted. In its endeavours concerning business and human rights, the Federal Government is focusing on the implementation of the UN Guiding Principles on Business and Human Rights, the OECD Guidelines for Multinational Enterprises, and the ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy. Against this backdrop, any decision on joining sectoral initiatives requires further examination.
155.21–25:
Supported.
155.26–28:
Noted. Germany has an extensive system of legal protection and complaint mechanisms at federal and Land level. An expansion is not deemed necessary.
155.29–30:
Supported. Follow-up is ensured by both ministerial and inter-ministerial mechanisms. Designated focal points for each of the UN human rights instruments that Germany has ratified bear primary responsibility for implementation and follow-up, as well as for comprehensive reporting involving all other relevant ministries.

155.31:
Noted. For the establishment of a Permanent National Follow-up and Implementing Mechanism, see 155.29. As regards its development cooperation policy, Germany is committed to supporting the human rights architecture in partner countries in compliance with its human rights concept. This concept is based on a dual approach consisting of support for specific human rights projects and mainstreaming of the human rights approach.
155.32–48:
Supported.
155.49–50:
Supported. The Federal Government is planning an interministerial equality strategy that will culminate in an action plan in accordance with the recommendation.
155.51–52:
Supported.
155.53:
Noted. Germany has an extensive system of legal protection and complaint mechanisms at federal and Land level. An expansion is not deemed necessary.
155.54–60:
Supported.
155.61:
Noted. See 155.53.
155.62–75:
Supported.
155.76:
Noted. The prohibition of discrimination with regard to state action is comprehensively ensured by national and international fundamental and human rights. Various legal instruments prohibit discriminatory practice and encompass various forms and sanctions also in the area of private law. However, not all forms of discrimination are subject to penal sanctions.
155.77:
Noted. There is no need to introduce an explicit definition of racial discrimination in German law since the ICERD obligations, including the definition of racial discrimination in Article 1 (1) of the ICERD, are directly applicable law in Germany. Moreover, German law provides the legal framework for combating all forms of racial discrimination that fall under this definition.
155.78–84:
Noted. Racial profiling is prohibited under German law; racial profiling is not an element of police practice. The enforcement of applicable law is part of the training and further education of the Federal Police. Human rights, fundamental rights, the prohibition of discrimination, the prohibition of abuse and torture, the UN Charter, the European Convention on Human Rights, and intercultural competence are addressed on a regular basis. They are developed on a constant basis and flanked by common standards for police work in which fundamental rights are respected. Such training measures enable police officers to carry out their duties in accordance with the road map of the European Union for its work in the area of freedom, security and justice. In addition, the Federal Government aims to raise awareness among public sector employees of all forms of racist marginalisation and discrimination.
155.85:
Noted. The current legal situation and mechanisms are deemed to be sufficient. As far as general practical measures that aim at looking into and preventing racial discrimination are concerned, the Federal Government adopted the National Action Plan Against Racism in June 2017 and will put this into practice.
155.86–92:
Supported.
155.93–95:
Supported.
155.96–98:
Supported. Training and awareness raising regarding racial discrimination remain an important task for police forces in the Federal Republic of Germany. As regards the Federal Criminal Police Office (BKA), numerous measures have been taken to raise awareness of discrimination issues among police officers. The Federal Criminal Police Office's training now has a stronger focus on such topics as intercultural skills, interaction with victims, and awareness of right-wing extremism. Training manuals and programmes are being improved and updated on a constant basis. It should be noted that training for the police of the Länder falls entirely within the remit of the Länder.
155.99–111:
Supported.

155.112:
Noted. The Federal Government has no influence over the content of medical guidelines. In Germany, drafting of medical guidelines falls within the remit of medical associations. The Association of the Scientific Medical Societies in Germany (AWMF), which is working on the new S3 guideline referred to by Uruguay, plays an important coor "nating role and has, for many years, provided a structured procedure for the preparation of guidelines. Alongside, for the most part, a number of medical associations, representatives of associations of affected parties are regularly involved in this procedure as required. The Federal Government is unable to work towards the aforementioned coherence between the MDS guidelines of 2009 and the new S3 guideline.

155.113:
Noted. Under applicable law, in the case of the birth of a child who cannot be classified as male or female, it is recorded in the birth register without any sex marker. The draft law amending the data to be entered in the birth register is intended to give intersex persons the additional option of choosing "miscellaneous". The Transsexuals Act (Transsexuellenrecht) is to be revised to this end.

155.114:
Noted. The Federal Government is of the opinion that there is no need for such measures.

155.115–117:
Supported.

155.118:
Noted. No specific review of legislation is envisaged at the present time.
I n Germany, all Special Rapporteurs have a standing invitation.

155.119–121:
Supported.

155.122:
Noted. Law enforcement agencies and criminal courts already guarantee independent investigations. There is a standardised procedure for dealing with complaints of alleged official misconduct in all authorities and agencies.

155.123–128:
Supported.

155.129:
Noted. The recommendations of the said committees have already been examined comprehensively. The Federal Government takes its lead from the recommendations of the two German Bundestag Committees of Inquiry on the NSU. The implementation of the recommendations is monitored on an ongoing basis.

155.130–131:
Supported.

155.132:
Noted. The framework conditions for the application of coercive measures in Germany have, not least against the backdrop of international agreements, in particular the UN Convention on the Rights of People with Disabilities (CRPD), been constantly developed with legal regulations in recent years. Strengthening the will of patients and patient autonomy – also explicitly with regard to people with mental illnesses – has become increasingly important in this regard. When weighing up the greatest possible degree of self-determination on the part of the patient and the need to safeguard the patient's well-being, coercive measures must always be the last resort.
When caring for people with mental illnesses, situations may, however, arise in which considerable dangers to those affected or third parties cannot be averted without recourse to temporary measures restricting freedom, despite previous efforts to implement less intrusive measures. In such cases, it must, in the opinion of the German legislature and the supreme courts, be possible to take legally legitimised measures restricting freedom. However, this is only permissible in justified individual cases and, beyond situations of imminent danger, requires a decision by a court. The need for the measures introduced must be assessed on a constant and rigorous basis. Measures must be terminated without delay in the event that they are no longer required.
In view of such a differentiated assessment of measures restricting freedom, there is no justification for seeking to force States Parties to regard any use of measures restricting freedom for the benefit of the person affected as acts of torture. A legislative prohibition without exception of the measures in question is also not conceivable for the same reason.

155.133–141:
Supported.

155.142:
Noted. Honour crimes feature particularly prominently today in the fight against hate crimes. In this regard, there have even been increasing calls in Germany to step up punishment if corresponding crimes are committed using the internet. Defaming content spreads rapidly online and is often very

difficult to remove.

155.143–146:

Supported.

155.147:

Noted. There is currently no political majority in favour of lowering the constitutionally stipulated electoral age limit to 16 years.

155.148:

Noted. The German provisions governing the funding of political parties already guarantee adequate transparency in party funding.

155.149–164:

Supported.

155.165:

Noted. Surveillance measures require a legal basis that safeguards the principles of proportionality and necessity in particular. Surveillance measures observing those regulations do not constitute violations of human rights.

155.166:

Supported. The Federal Government notes that different forms of family exist.

155.167:

Noted.

155.168–172:

Supported.

155.173:

Noted. The Federal Government is currently developing a key issues paper regarding the immigration of qualified workers from non-EU countries, without distinction to the immigrants' gender.

155.174–176:

Supported.

155.177:

Supported. Social protection of subsistence farmers, including young people and women, is guaranteed through social legislation as well as policies regarding rights to participation and conditions of work.

155.178:

Noted. The Federal Participation Act (Bundesteilhabegesetz – BTHG) was introduced in 2016 to reform welfare services and access for persons with disabilities according to the Convention on the Rights of Persons with Disabilities (CRPD). The reform will gradually enter into force by 2020. One key objective of this reform is to further improve assistance benefits for persons with disabilities. Necessary support should be geared mainly to the individual's needs. Germany is monitoring the implementation and impact of the new rules. An extension of welfare services is currently not planned.

155.179–183:

Supported.

155.184:

Noted.

155.185–188:

Supported.

155.189–190:

Supported. The Government and the Länder remain committed to fighting inequality in the education system. There is nevertheless no compelling evidence of structural discrimination inherent in the system. Disadvantaged students, including students with a migrant background, are offered a wide range of support measures.

155.191–195:

Supported.

155.196:

Noted. Other measures to protect women exist outside the realm of residence law; following the expiry of a three-year marriage period, residence permits are extended even if the marriage is terminated due to domestic violence; in addition, a discretionary decision on whether to grant a residence permit is possible already prior to the expiry of the three-year marriage period in the event of domestic violence.

155.197–199:

Supported.

155.200:

Noted.

The establishment of child-friendly contact and complaints centres that children can contact

themselves on all matters that concern them is a useful measure and is viewed favourably. These include, for example, children's representatives, children's offices or complaints centres/ombudsman offices that have become established in Germany, above all in the area of child and youth welfare. The immediate environment in which children live is a decisive factor for them. Points of contact that receive individual complaints from children or their representatives or which support and offer advice on the same should therefore be at a low threshold, i.e. easy for children to access, well organised and in the immediate vicinity. There are already numerous such contact and complaint centres in Germany at municipal level. The establishment of a federal commissioner for children as called for here is not enough to satisfy needs in this area.

155.201–203:

Supported.

155.204:

Noted. The Federal Government is of the opinion that the criminal provisions already ensure comprehensive protection and that a revision is therefore not required.

155.205–207:

Supported.

155.208:

Noted. In 2017, Germany considered a possible revision of the German language translation of the UN Convention on the Right of Persons with Disabilities (CRPD), also in Germany, with a critical appraisal of the changes made to the translation in Austria. Having considered the arguments for and against this, Germany is of the opinion that the costs of revising the German version of the CRPD outweigh the benefits and therefore does not wish to undertake this step. A revision to the translation of the CRPD would only be of limited value as it long since been overtaken by developments in the field of participation and disability policy and questions as to the tangible (further) implementation of the CRPD feature far more prominently than the question as to the revision of the German language translation, which according to Article 50 is not among the authentic language versions of the Convention in the first place.

155.209–212:

Supported.

155.213:

Supported. There are no group-specific, differentiated mechanisms for access to the labour market that relate to ethnicity. Access takes other individual characteristics into account. In legal terms, Sinti and Roma, as German or equivalent citizens, enjoy the same access to the labour market as other nationals. The Federal Government therefore does not see any need to step up measures in this regard.

155.214–215:

Supported.

155.216:

Supported. The German Basic Law provides for the following in Article 5 (1): "Freedom of the press and freedom of reporting by means of broadcasts and films shall be guaranteed." Legislation at the federal level and at the level of the Länder is in accordance with this constitutional guarantee. Aside from this, efforts are being undertaken to promote the use of such minority languages, which are officially recognised in Germany according to the European Charter for Regional or Minority Languages.

155.217, 155.218, 155.220:

Supported. There is no basis in German law for recognition as an "ethnic minority". In Germany, indigenous minorities are recognised as national minorities as defined by the Council of Europe's Framework Convention for the Protection of National Minorities. These include the Danes, the Frisian ethnic group, the Sorbian people and the German Sinti and Roma. Moreover, the Federal Government wishes to point out that the General Equal Treatment Act (Allgemeines Gleichbehandlungsgesetz – AGG) applies in Germany with respect to protection against discrimination. This legislation seeks to protect all people with regard to the characteristics of discrimination it mentions, and thus encompasses people of all origins living in Germany. The Federal Government's ongoing integration measures seek to promote equal opportunities and are geared towards all those who are eligible to benefit from them, regardless of their national, ethnic or religious background.

155.219:

Supported. The General Act on Equal Treatment (Allgemeines Gleichbehandlungsgesetz – AGG) applies in Germany with regard to protection against discrimination. This legislation seeks to protect all people with regard to the characteristics of discrimination to which it refers, and thus also includes people of African descent living in Germany. Moreover, the Federal Government is working on an ongoing basis to tackle structural discrimination, also in the labour market on account of origin, among other things. There is no basis in German law for recognition as an "ethnic minority". The

Federal Government therefore rejects the second part of the recommendation. In Germany, indigenous minorities are recognised as national minorities as defined by the Council of Europe's Framework Convention for the Protection of National Minorities. These include the Danes, the Frisian ethnic group, the Sorbian people and the German Sinti and Roma.

155.221:

Supported.

155.222:

Noted. See 155.219.

155.223–224:

Supported.

155.225:

Noted. Germany offers access to high-quality medical care, but does not intend, as a rule, to dispense with the migration policy instrument of compulsory registration with foreigners authorities. Emergency care by doctors in public hospitals in particular can be provided confidentially in accordance with applicable law. In these cases, there is an exemption to the obligation to register with the foreigners authorities.

155.226–230:

Supported.

155.231:

Noted.

155.232–237:

Supported.

155.238:

Noted. Safeguarding human dignity is paramount under existing laws. No legislative changes are envisaged at this time.

155.239–240:

Supported.

155.241:

Noted. German asylum law and practice is in accordance with international law. Germany always strives to ensure the effectiveness of investigations in criminal cases.

155.242–256:

Supported.

155.257:

Noted.

155.258–259:

Supported. Birth registration is guaranteed irrespective of migratory status.